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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-189064**

**DATE: April 19, 1978**

**MATTER OF: Bokonon Systems, Inc.**

**DIGEST:**

1. In absence of specific requirement in solicitation, there is no commitment by offeror to assign to contract those whose resumes were submitted in good faith with proposal and no basis exists for questioning agency's evaluation of proposals on basis of personnel reflected therein.
2. As panel's evaluation of protester's proposal was reasonable and consistent with solicitation's evaluation factors, its unanimous conclusion that proposal was technically unacceptable will not be questioned notwithstanding that proposal evaluations, which were independently performed by individual members of the review panel prior to convening as a group, were inconsistent with solicitation's evaluation criteria.
3. Solicitation stating award would be based on qualification criteria and price is deficient where weights are given to qualification criteria but there is no indication of relation of price to qualification criteria. Moreover, record does not indicate that agency considered price reasonableness of second award to offeror with price 2-1/2 times higher than concurrent award to offeror with significantly better technical proposal.
4. Recommendation is made that future solicitations allocating significant weight to qualification of proposed personnel include provision requiring agency approval of any personnel replacements.

Bokonon Systems, Inc. (Bokonon) protests the rejection of its proposal by the Equal Employment Opportunity Commission (EEOC) under Request for Proposals (RFP) No. EEO 76085.

The solicitation called for fixed-price proposals to develop a research design for assessing the impact of EEOC programs on minorities and women. Bokonon's proposal was eliminated from the competition after it was determined to be technically unacceptable. Bokonon argues that the agency's stated reasons for rejecting its proposal are invalid and that the selection of the winning contractors (two contracts were awarded) was arbitrary because it deviated from the solicitation's evaluation criteria.

It is the position of EEOC that each proposal was considered in light of the criteria stated in the solicitation. The contracting officer reports that the review panel met as a group after each member independently evaluated the proposals, and that a discussion was held on each proposal, but no attempt was made to develop a composite panel numerical score even though some members had developed a scoring system for each proposal. The contracting officer states that instead, "a far-ranging discussion was conducted on each proposal following the RFP's weighting system." The report of the review panel unanimously concluded that five of the seven offerors were not technically qualified. Only two proposals were regarded as acceptable.

The basis stated for rejection of Bokonon was:

"Project director and team do not indicate depth and breadth of expertise required in labor economics, statistics, mathematics, industrial psychology and econometrics. The approach to the proposal was not responsive because it did not address all of the requirements of the RFP and because the proposal model was very restrictive."

The solicitation's weighted factors for evaluating proposals were:

- A. Qualifications of Research Team, including experience of principals and research director (30 points)
- B. Approach to development of research design (30 points)
- C. Understanding the problem (30 points)
- D. Ability to do subsequent phases of project (10 points)

Bokonon asserts that a comparison of its proposal with the winning proposals will substantiate its contention that the evaluation criteria were not followed. Bokonon has reviewed the resumes submitted with the acceptable proposals and argues that the personnel proposed by Bokonon had far superior experience and demonstrated technical competence greater than those proposed by both acceptable offerors. Moreover, Bokonon argues that it submitted firm commitments from its proposed personnel whereas few, if any, of the successful offerors' proposed personnel were actually utilized in performing the work. The protester states that EEOC made no effort to determine whether the proposed personnel of the acceptable offerors made commitments to the organizations proposing them and, that, in fact, certain of the personnel proposed were not utilized in performance of the contracts. The protester therefore believes that EEOC's determinations were arbitrary and not in accordance with the stated evaluation criteria concerning personnel and experience.

In this case offerors were required to include a management plan of the staffing level and organization of the project team, and indicate the percentage of time of the project director and senior team members to be devoted to the project. Bokonon and the successful offerors responded to this requirement.

In addition, Bokonon submitted letters in which certain proposed personnel stated their interest in participating in the work and Bokonon believes that this should have been considered in evaluating the merits of the proposals. However, the solicitation did not require offerors to furnish statements from their proposed personnel indicating their intention to participate in the project. In fact, as a general rule the evaluation of an offeror's proposed key personnel, even though changed after award, is not objectionable where names are submitted in good faith. Kirschner Associates, Inc., B-187625, June 25, 1977, 77-1 CPD 426. In the circumstances, we find no basis for questioning the agency's evaluation of the proposals on the basis of the personnel reflected therein.

It is not necessary, in our opinion, to decide the validity of the protester's position that Bokonon's personnel demonstrably possessed superior technical capabilities. The evaluation panel did not reject Bokonon because its team possessed inferior capabilities. Rather, the agency could not determine how much of an effort would be made by Bokonon in the required disciplines.

In this connection, the solicitation required that the credentials of the project director and staff indicate expertise required to mount an interdisciplinary study. As stated in the solicitation, the project required expertise in the following areas:

- "--employment discrimination research
- economics, labor and business
- operations research, that is, persons who can analyze and recommend improvements in program operations
- industrial personnel practices and policies
- Title VII law
- statistics, mathematics

- econometrics
- industrial psychology
- sociology
- public administration"

Bokonon included resumes with its proposal for the key staff and consulting personnel. In each case, the resumes initially identified the individual's education only by academic degree and educational institution. In only one case did the resume give the disciplines in which the individual's degrees were earned. In contrast, the successful offeror's resumes clearly identified, in most cases, the disciplines in which academic degrees were earned. Nevertheless, Bokonon's resumes also provided a narrative discussion of each individual's work experience and the individual's publications, if any. In most cases the primary disciplines of Bokonon's proposed staff members can be ascertained from the experiences stated in the resumes. However, unlike the successful proposals, Bokonon did not show the proposed staff time by discipline, except in the case of four consultants in the areas of research, survey, law and data. The bulk of Bokonon's proposed manpower was shown in terms of key staff positions, i.e., project director, project coordinator, co-principal investigator and research associate, without indicating more specifically how much time would be devoted by these individuals to the disciplines required by the solicitation. In contrast, the successful offerors stated the time allotted for each proposed discipline by task to be performed. Therefore, we believe it was not unreasonable for the evaluation panel to conclude that Bokonon's proposal was inferior as to the depth and breadth of expertise in specified disciplines.

Bokonon also objects to EEOC's conclusion that Bokonon's "proposed model was very restrictive." The protester argues that this statement is false because it did not propose a model but, rather, it proposed to develop a model and discussed in detail the constraints

and requirements to be considered in such a developmental effort. As stated by the protester, its proposal pointed out the importance of using some measure of income to assess discrimination. Bokonon's proposal states at page 9 that it will not provide a model for measuring activities impacting to reduce discrimination but, rather, will indicate the depth of its experience and suggest the firm's potential for the ultimate development of a solution to the problem of how to measure the impact of EEOC activities upon employment discrimination.

Nevertheless, Bokonon's proposal then goes on to discuss in great detail its proposed approach to analyzing EEOC impact, with income being the single and most important measure of discrimination. The proposal states, in part, that its "presentation of an approach which utilizes a unitary measure offers the potential for assessing the effects of EEOC activities in terms of their cost and benefit." In response to the solicitation requirement that the ultimate research design spell out methodologies to enable EEOC to articulate the quantifiable measures of success of EEOC efforts, Bokonon's proposal responded as follows:

"We have suggested that, although there are many benefits emerging from EEOC efforts, it is critical that the focus of impact analysis be in the elimination of discrimination. Consequently, we have focused on the development of a single unitary measure capable of being used to measure changes in discrimination. We feel that the measure provides hope of obtaining a realistic indication of changes in discriminatory patterns."

We also note that in presenting a detailed specification of "tasks, deliverables and proposed work schedule" Bokonon prefaced its work plan by referring to "its effort to articulate its approach to developing

an income-derived solution to the problems of assessing EEOC impact." As to phase I of contract performance, Bokonon proposed to review data "to collect information required to obtain definitions and attributions of income differential as a measure of EEOC impact." In phase II the firm offered to produce a specification of the model and stated that its strategy would be "to develop methods for utilizing income differential model \* \* \*." Based on our review of Bokonon's proposal, we believe the conclusion reached by the evaluation panel concerning the restrictive nature of Bokonon's proposal is reasonable.

In the course of our review, however, we have noted defects in the evaluations independently performed by individual members of the review panel prior to their convening as a group. One evaluator combined the evaluation points to be assigned for the ability of offerors to do subsequent phases of the project with the points assigned for the qualifications of the research team. However, it appears that only the latter factor was scored by this individual. Another evaluator scored only the qualifications of the research team and the approach to the research design on a scale of 60 points. In our opinion, these individual evaluations were inconsistent with the criteria stated in the solicitation and we therefore are recommending to the Commission that appropriate action be taken to preclude a recurrence.

We nevertheless believe that the defective individual evaluations did not invalidate the review panel's ultimate conclusion that Bokonon's proposal was technically unacceptable. Given the purpose of this contract, we believe that EEOC had great latitude to make a selection based on the evaluation criteria set forth in the solicitation. The panel's reasons for rejecting the proposal, as indicated above, were not arbitrary. Moreover, the rejection clearly is consistent with the importance attached to the solicitation criteria concerning the qualifications of the research team and the research design approach, which, together, were assigned a majority (60) of the evaluation points. The inadequacies

perceived by the panel, in our opinion, provide sufficient justification for the rejection of Bokonon's proposal as technically unacceptable. Industrial and Systems Engineering, Inc., et al., B-187585, April 22, 1977, 77-1 CPD 278.

Accordingly, the protest is denied.

There were additional procurement deficiencies which merit discussion here. They do not, however, individually or collectively clearly indicate that the interests of Bokonon were prejudiced to an extent that its protest should have been sustained.

This Office has frequently held that in order to achieve effective competition, the prospective offerors should be informed in the RFP of the relative importance of price to technical factors. Offerors are entitled to know when they prepare their proposals whether the procurement is intended to achieve a minimum standard at the lowest cost or whether cost is secondary to quality. Southern Methodist University, B-187737, April 27, 1977, 77-1 CPD 289; Iroquois Research Institute, 55 Comp. Gen. 787 (1976), 76-1 CPD 123.

The statement in this RFP that award would be based on the qualification criteria and price exclusive of options does not meet this requirement. EEOC concedes that price was not a factor in the awards and points out that awards went to offerors proposing the highest price and the lowest price. Thus, the RFP was deficient in that it did not adequately convey to potential offerors that technical merit would be of greater importance than price.

Also, FPR § 1-3.805-1(a) requires that with certain specified exceptions, written or oral discussions be held with all responsible offerors determined to be within the competitive range, price and other factors considered. One of these exceptions applies when it can be clearly demonstrated from the existence of adequate price competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and

reasonable prices. The record does not indicate that EEOC considered the reasonableness of HRC's price. After awarding a contract for \$98,515.00 to JWK, whose technical proposal was considered substantially superior to HRC and all others, EEOC awarded a contract without negotiations to HRC at a price of \$245,732.00. The record is devoid of an explanation for this anomaly.

In addition, the solicitation allocated a significant weight (30 percent) in the technical evaluation to the qualifications of proposed personnel. In the future, we suggest that the agency consider including a provision requiring its approval of any replacements necessitated by intervening changes in circumstances.

Finally, we believe the agency was remiss in failing to properly and concurrently document in the procurement file the full rationale for its selections. If a record had been properly maintained perhaps the agency would have been less reticent to provide Bokonon a timely debriefing. It was five months after its request before Bokonon was given a debriefing. Moreover, we found the agency's rationale to be obscure and, consequently, it was necessary to evaluate the successful proposal and the protester's proposal to determine whether the panel's conclusions, in spite of the inadequate documentation, were consistent with the evaluation criteria. Normally our review is limited to determine the reasonableness of the agency's rationale for its selection, rather than to provide the underlying support for the agency's conclusions.

By letter of today, we are recommending to the head of the agency that corrective action be taken to preclude the recurrence of the procurement deficiencies noted above.

*R. P. K. Allen*  
Deputy Comptroller General  
of the United States